

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**March 19, 2013**

**The Rhode Island Ethics Commission held its 4th meeting of 2013 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, March 19, 2013, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair    Mark B. Heffner\*\***

**John D. Lynch, Jr., Secretary\*    Edward A. Magro**

**Frederick K. Butler    James V. Murray**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine DiArezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross and Gary V. Petrarca.**

**At 9:11 a.m. the Chair opened the meeting, with only four (4) members present, to receive the legislative update while they waited to achieve**

a quorum, given that no official action was required on that agenda item.

Staff Attorney Gramitt discussed the status of four (4) pending pieces of legislation. The first was House Resolution 5498 and its counterpart Senate Resolution 337, which is a joint resolution to approve, publish and submit to the electors a proposition of amendments to the Constitution of the State to restore the jurisdiction of the Ethics Commission regarding core legislative acts. Staff Attorney Gramitt informed that he, as well as representatives from Common Cause of Rhode Island, the League of Women Voters, the Rhode Island Tea Party, the Rhode Island ACLU and former Commissioner Mel Zurier testified before the House Judiciary Committee, with only the ACLU speaking in opposition.

\* Commissioner Lynch arrived at 9:14 a.m. [There was a quorum.]

Staff Attorney Gramitt stated that the House Judiciary Committee unanimously approved a motion to recommend the Resolution for passage. He advised, however, that the motion was nullified on the next day and the person who made the original motion for passage was removed from the Committee. He stated that the Resolution is currently being held for further consideration. He added that the Senate has not scheduled its Resolution for a hearing, but when they do he will attend to provide testimony.

The second was House Bill 5385, which would amend the election laws requiring persons and entities hired by the State to file with the Ethics Commission a disclosure of the last four (4) years' political contributions made to a state elected official. He stated that this was scheduled for a hearing on March 26, 2013. He commented that the Bill is not likely to pass this year and he recommended watching its progress.

**\*\* Commissioner Heffner arrived at 9:16 a.m.**

The third was House Bill 5673, which was introduced at the request of Governor Chafee and would make changes to the Code of Ethics by requiring additional financial disclosures and an independent audit of 10% of all financial disclosure statements annually. He informed that he was contacted by the Governor's Assistant General Counsel prior to the Bill being put forth as legislation. He stated that he had some concerns with this Bill, as drafted, and has expressed these concerns to the Governor's Assistant General Counsel. He questioned how the Bill would define "independent" and "audit." For example, he stated "independent" could mean hiring a private law firm or CPA firm to review the statements. He informed that Commission staff currently reviews paper statements to ensure that each question was answered and the online database requires all questions to be answered. He noted, however, that if "audit" means determining if each question was answered correctly, that would be something that could conservatively take at least ten (10) hours for

each statement. He stated that 10% of the statements filed would be approximately 300 to 380 statements each year. He suggested that this process could easily add up to a cost of several hundred thousand dollars.

Commissioner Butler noted that auditing each question for correctness would require significant supporting documentation and could likely amount to much more than ten (10) hours of work for each statement. He also stated that a 1 in 10 chance of an audit could have a chilling effect on those seeking public office. He commented that financial disclosure statements are public records, audited by the public and the press.

In response to Chair Cheit, Staff Attorney Gramitt stated that it was not clear from his discussion with the Governor's Legal Counsel as to what problem this Bill would be a solution to. He stated that, at the Commission's direction, he would attend a hearing and convey the Commission's concerns not over the idea of an audit, but over the scale, costs and chilling effects that might result from such a comprehensive audit. He added that this Bill would also require extra disclosures, such as: delinquent taxes; child support arrears; and leadership positions in political action committees. He noted that all of these things are already required to be disclosed and the Commission could clarify instructions to identify these specific concerns.

**Chair Cheit directed Staff Attorney Gramitt to advise the Commission if this Bill goes to a hearing. He stated that it is important for the Legislature to understand the Commission's actual procedures for financial disclosure statements. In response to Commissioner Heffner, Executive Director Willever stated that he had not received any inquiry from the Governor's office relative to our financial disclosure procedures. Commissioner Heffner suggested sending a letter to the Governor's office explaining Commission procedures for ensuring questions are answered and the auditing by the press and the public of these public records. Chair Cheit responded that there are still many questions at this stage of the legislative process and he advised Staff Attorney Gramitt to raise questions about the Bill, rather than take a position, in order to clarify the intent and scope of the Bill.**

**The final matter was Senate Bill 698, which would make all members of the Ethics Commission direct gubernatorial appointments subject to the advice and consent of the Senate. Staff Attorney Gramitt stated that historically the Commission has taken no opinion on the designated appointment process for its members.**

**The next order of business was the approval of minutes of the Open Session held on February 19, 2013. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To approve minutes of the Open Session held on February**

**19, 2013.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Michael J. Colonair, a member of the Pascoag Fire District Board of Commissioners, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from seeking or accepting employment as a volunteer firefighter in the Pascoag Fire District.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner asked the Commission to reconsider its decision given his past service as a volunteer firefighter, the difficulty in recruiting volunteer firefighters and his present willingness to serve without a stipend. He stated that there were other Fire Commissioners who were also volunteer firefighters but never resigned from their positions. He added that the Fire Chief told him that he had to resign before seeking election to the Board and that he resigned only five (5) days before his election. In response to Chair Cheit, Staff Attorney Stewart replied that the Petitioner did not offer to serve as a volunteer firefighter, without a stipend, until after this advisory opinion was drafted.**

In response to Commissioner Butler, Staff Attorney Stewart responded that past advisory opinions have not made a distinction between a stipend and a salary. The Petitioner stated that Hose Company #1 officially accepted his resignation, but he was misinformed and would not have resigned if he did not have to prior to seeking election. In response to Commissioner Lynch, the Petitioner stated that volunteer firefighters are limited to people living within two (2) miles of the district, or a little further with permission of the Chief. He said that losing a volunteer firefighter has a substantial impact upon the Fire District. Chair Cheit advised the Petitioner to continue his discussions with Staff Attorney Stewart and seek another advisory opinion if there are sufficiently different circumstances. Upon motion made by Commissioner Magro and duly seconded by Commissioner Heffner, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Michael J. Colonair, a member of the Pascoag Fire District Board of Commissioners.

The next advisory opinion was that of:

James J. Lombardi, III, Esq./CPA, the City Treasurer for the City of Providence, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from receiving a Community Development Block Grant from the City.

**Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he concurred with the Staff's recommendation. Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to James J. Lombardi, III, Esq./CPA, the City Treasurer for the City of Providence.**

**The final advisory opinion was that of:**

**Richard A. Monteiro, an alternate member of the Woonsocket Personnel Board, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in matters before the Personnel Board that involve members of Woonsocket City Employees Local 670, Council 94, AFSCME, AFL-CIO, given that his daughter is a police dispatcher in Woonsocket and a member of that local bargaining unit.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Richard A.**



**Monteiro, an alternate member of the Woonsocket Personnel Board.**

**The next order of business was a discussion of a statute of limitations on ethics violations and the consideration of preliminary language regarding potential regulatory proposals to adopt a limitations period. Senior Staff Attorney DiArezzo stated that she provided the Commission with six (6) versions of preliminary language, the last two (2) of which were passed out at the meeting and contained language regarding reasonable discovery and concealment. She provided a summary of the previous Commission discussions on this matter. She stated that, in response to a request from Commissioner Cerullo, she reviewed the statutes of limitations for somewhat analogous white collar criminal offenses and found that most offenses had a ten (10) year limitations period. She informed that when the Attorney General prosecutes a violation of the Code of Ethics as a criminal misdemeanor the limitations period is three (3) years.**

**Senior Staff Attorney DiArezzo introduced the six (6) preliminary regulatory options:**

**„X Option A provides for a ten (10) year limitations period from the date the alleged conduct occurred.**

**„X Option B is similar to Option A, but adds that a complaint will not be accepted more than (2) years after that person severed their**

position held at the time of the alleged violation.

„X Option C builds on Option A, but adds a shorter five (5) year limitations period for complaints relating to the failure to file a financial disclosure statement or the filing of a deficient or inaccurate statement, running from the date the statement was due.

„X Option D combines the language of Option B, a ten (10) year limitations period with a two (2) year repose, along with the additional five (5) year financial disclosure limitation from Option C.

„X Option E provides for a ten (10) year limitations period from the date of the alleged violation or reasonable discovery of the alleged violation.

„X Option F provides for a ten (10) year limitations period from the date of the alleged violation and in the event of concealment, the limitations period is tolled.

Discussion ensued. Some Commission members expressed concern about the meaning of „reasonable discovery” and what would constitute „concealment.” Senior Staff Attorney DiArezzo stated that only four (4) of the jurisdictions included in the staff’s review have discovery or tolling provisions: Nevada, North Carolina, Hawaii and Massachusetts.

Discussion ensued about the ability to change the length of the limitations period in the proposed regulation once rulemaking begins.

Commissioner Murray suggested going forward on more than one (1) option and stated that he liked Option B. He also stated that one of

the Options should not have a repose provision. Chair Cheit stated that the repose period should begin not when the person leaves a particular position but when they leave public life entirely. Senior Staff Attorney DiArezzo stated that the two jurisdictions with repose provisions, New York and New Jersey, both provide that the repose period begins the time the person separates from state service.

Commissioner Lynch stated that it may be difficult to determine the difference between active concealment and passive or negligent non-disclosure. He noted that the financial disclosure statement requires relationships to be disclosed and questioned whether such a provision would be appropriate.

Chair Cheit directed staff to prepare three options for consideration at the next meeting: Option A as written; Option B as written except that the repose period should run from the time the person is no longer subject to the Code of Ethics; and a new Option C, which is the same as Option B, but also includes a provision of reasonable discovery.

The next order of business was the Director's Report. Executive Director Willever reported that there are eight (8) complaints pending. He stated that all of the non-filing complaints have been settled and closed. He added that there are two (2) advisory opinions and one (1) litigation matter pending. He also stated that nine (9) APRA requests were granted since the last meeting and all were fulfilled within one

**(1) day.**

**Executive Director Willever stated that Alice Aieskoll is the new receptionist at the Commission. He also introduced Michael Lord, Executive Director of the Maryland Ethics Commission, who was visiting the Commission to observe the practices and procedures in Rhode Island.**

**At approximately 10:43 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**(a) Motion to approve minutes of Executive Session held on February 19, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(b) In re: Kimberley Gaffett, Complaint No. 2013-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(c) In re: Kimberley Gaffett, Complaint No. 2013-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 11:20 a.m. The next order of business was a motion to seal the minutes of the March 19, 2013, Executive Session. Upon motion made by**

**Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To seal the minutes of the March 19, 2013, Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1. Unanimously voted to approve the minutes of the Executive Session held on February 19, 2013, with an amendment.**

**2. Approved, by a vote of 4 to 2, an Informal Resolution and Settlement for In re: Kimberley Gaffett, consolidated Complaints Nos. 2013-1 and 2013-2.**

**The next order of business was New Business and general comments from the Commission. There being none, at 11:22 a.m., upon motion made and duly seconded, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**

**Secretary**